

KENTUCKY LABOR CABINET
OCCUPATIONAL SAFETY AND HEALTH PROGRAM
FIELD OPERATIONS MANUAL
CHAPTER 8 FATALITY / CATASTROPHE INVESTIGATIONS

CHAPTER VIII

FATALITY/CATASTROPHE INVESTIGATIONS

A. General.

1. Policy. All job-related fatalities and catastrophes, however reported, shall be investigated as thoroughly and expeditiously as resources and other priorities permit.
2. Definitions. The following definitions apply for purposes of this chapter:

- a. Fatality. An employee death resulting from an employment accident or illness; in general, from an accident or illness caused by or related to a workplace hazard.
- b. Catastrophe. The hospitalization of five or more employees resulting from an employment accident or illness; in general, from an accident or illness caused by a workplace hazard.

NOTE: "Accidents involving significant publicity" or any other accident not involving a fatality or a catastrophe, however reported, shall be considered as either a complaint or a referral, depending on the source of the report, and shall be handled according to the directions given in Chapter IX. Accidents discovered during the walkaround on a programmed inspection shall be handled as part of the programmed inspection in accordance with Chapter II, F.2.b.

- c. Hospitalization. To be admitted as an inpatient to a hospital or equivalent medical facility for examination or treatment.
 - d. Reporting. Reserved.
3. Fatality/Catastrophe Investigations. Upon initial contact the employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation shall be explained; namely, to determine:

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- a. The cause of the accident.
- b. Whether a violation of KY-OSH Program safety or health standards related to the accident occurred.
- c. What effect the standard violation had on the occurrence of the accident.
- d. If KY-OSH Program standards should be revised to correct the hazardous working condition that led to the accident.

B. Action.

1. Preinvestigation Activities. It is essential to the proper conduct of a fatality or catastrophe investigation that preparations be carefully made. The KY-OSH Program will often be the subject of public scrutiny in the conduct of such investigations, and it is imperative that they be complete and professionally competent.
 - a. Supervisor. If the fatality or catastrophe appears to require a KY-OSH Program investigation (i.e., it is or may be occupationally related and KY-OSH's jurisdiction is not preempted), the Supervisor shall ensure that the required IMIS forms are completed and shall report the event to the Director, who shall furnish all pertinent information to the Secretary in accordance with C.1, as soon as it is verified that the fatality/catastrophe has occurred.
 - b. Preliminary Investigation. The supervisor, upon notification of an accident involving a fatality or catastrophe, shall gather as much information as is available prior to scheduling an inspection. If possible, this shall be done immediately through discussion with the person reporting the accident. If knowledge of the accident is received through the media or sources other than a representative of the employer, the employer shall be contacted as soon as possible to obtain additional information whenever the supervisor believes that such contact will result in a more effective inspection. Such contact shall be considered advance notice and the procedures for advance notice shall be followed. (See Chapter III, C.2.)

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- c. Investigation Team. If an investigation team composed of experts in specific disciplines is required, the Supervisor shall so advise the Director. If resources beyond those available within the Program will be required to compose the team, the Program Manager shall determine the composition of the team and shall direct the investigation or delegate someone to serve as authorized Program representative. The team, as directed by the Program Manager or designated representative, shall proceed promptly to the scene and shall function as a unit in all phases of the investigation until officially directed to return to normal functions.
- d. Selection of CSHO. If the Director and the Supervisor determine that an investigation team effort is not required, a CSHO with expertise in the particular industry or operation involved in the accident or illness shall be selected by the Supervisor and sent to the establishment as soon as possible.
- e. Equipment. Prior to leaving for the accident scene the team or CSHO, as applicable, shall select the test equipment and the personal protective equipment necessary to support the investigation.

NOTE: Emergency testing equipment or special accident investigation instruments or protective clothing need not be set aside in the Office for emergency or accident investigation use only. All equipment shall be available for regular use at any time provided it is available if needed for fatality/catastrophe investigations.

- f. Other Agency. If another State or Federal agency is responsible for or participating in the investigation, the Program Manager and the Supervisor shall ensure that the CSHO and/or the team members are fully instructed in the KY-OSH Program's relationship with the other agency and each agency's areas of responsibility.
2. Investigation Procedures. Every reasonable effort shall be made to determine the cause of the accident. Otherwise, the same general policies and inspection procedures contained in Chapter III are applicable for the

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investigation of fatalities and catastrophes, except as otherwise provided in this chapter.

- a. Scope. Fatality/catastrophe investigations shall include a complete investigation of the circumstances of the accident, consistent with the purposes outlined in A.3. above.
- b. Inspection Strategy When a Comprehensive Inspection Is To Be Performed. Depending on the circumstances surrounding the accident, it may be necessary to conduct a comprehensive inspection of the workplace, before, concurrent with, or after the accident investigation. Other areas or operations in the establishment may have hazards similar to those that caused the accident; and, if so, they shall be brought to the employer's attention immediately.
- c. Abbreviated Opening Conference. In most cases, investigations of fatalities and catastrophes require that the CSHO get to the location of the alleged hazard as promptly as possible. Therefore, the CSHO shall reduce the time spent in the opening conference by limiting remarks to the bare essentials of identification, the purpose of the visit and the request for an escort by employee and employer representatives. The CSHO shall inform the employer that a records review will be conducted as soon as practicable after investigation of the accident. In addition, a more extensive discussion of other opening conference topics will be conducted at the closing conference.
- d. Families of Victims. Family members of employees involved in fatal occupational accidents or illnesses shall be contacted at an early point in the investigations, given an opportunity to discuss the circumstances of the accidents or illnesses, and provided timely and accurate information at all stages of the investigations as follows:

NOTE: All of the following require special tact and good judgment on the part of the CSHO. In some situations, these procedures should not be followed to the letter; e.g., in some small businesses, the employer, owner, or supervisor may be a relative of the victim. In such

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circumstances, such steps as issuance of the form letter may not be appropriate without some editing.

- (1) As soon as practicable after initiating the investigation, the CSHO shall attempt to compile a list of all of the accident victims and their current addresses, along with the names of individual(s) listed in the employer's records as next-of-kin (family member(s)) or person(s) to contact in the event of an emergency.
- (2) An information letter to the family member(s) or the person(s) listed as the emergency contact person(s) indicated on the victims' employment records within 5 working days of the time their identities have been established.
 - (a) The issuance of this letter shall be documented on the case file diary sheet.
 - (b) The minimum contents of this initial contact letter shall be as follows:
 - 1 The purpose and scope of KY-OSH's investigation.
 - 2 A brief outline of KY-OSH's civil enforcement process, including standards, citations, and penalty system.
 - 3 A request for information relevant to the investigation. This request shall include an offer to meet personally with appropriate persons to discuss any information they may have to offer.
 - 4 A statement offering the KY-OSH Program's assistance throughout the investigation. This assistance will be at a minimum:
 - a Being informed at inspection milestones; and,

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- b The offer to meet personally to answer questions.
 - c Subject to the requirements of Kentucky's Open Records Legislation, a free copy of releasable information from the case file at the time the file is closed; i.e., after the investigation is completed and any resulting KY-OSH Program enforcement proceedings have been concluded.
- (c) If the next-of-kin or the emergency contact person(s) cannot be determined through the employment records or fellow-employee interviews, the Director shall make a reasonable effort to identify the next-of-kin through a search of police reports, hospital admission records, coroner's records, and newspapers.
- (d) When the additional search does not identify a family member, the case file shall be documented to reflect the search and the extent to which it was carried out.
- (e) If the letter is returned as undeliverable, the letter and envelope shall be put in the case file and the date of return entered in the case file.
- (3) The compliance officer, when taking a statement pursuant to B.2.d.(2)(b)3, shall explain that the interview will be kept confidential to the extent allowed by law. The greatest sensitivity and professionalism is required for such an interview. The information received must be carefully evaluated and corroborated during the investigation.
- (4) Followup contact shall be maintained with a key family member or other contact person, when requested, so that the survivors can be kept

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up- to-date on the status of the investigation. Such contact can be by personal visit, telephone or letter, as requested, by the family member. These contacts shall be made at appropriate times; e.g., after the citation issuance, after an informal conference has been conducted, after the contest has been received, and when the case has been closed.

- (5) The victim's family members shall be provided a copy of all citations issued as a result of the accident investigation within 5 working days of issuance.
- (6) All KY-OSH Program staff are cautioned, when discussing the Open Records legislation with the family, not to mislead them about the speed with which they can obtain a copy of the disclosable information prior to closing the case file. Staff are further cautioned that the employer's rights must be protected. There should be no premature release of facts or findings during any meeting with non-KY-OSH Program personnel, before the investigation and subsequent litigation is completed.

e. Criminal. Reserved.

C. Reports. Reserved.

D. Special Situations.

1. Preemption. There may be situations where it is not clear whether the KY-OSH Program's authority to investigate fatalities or catastrophes has been preempted. In such cases the guidelines given in Chapter III, D.6.a. shall be observed with the following special considerations:

- a. General. If it is reasonably certain that the KY-OSH Program coverage has not been preempted, the Supervisor shall start the investigation at once and not let potential jurisdictional problems interfere with either notification or investigation.

- (1) If the Director cannot resolve a preemption problem at the local level, all pertinent information shall be relayed to the Federal

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Area Director, along with additional facts as they become available. A clear interpretation will be provided as soon as possible.

(2) Where prior determinations have been made that KY-OSH Program authority has been preempted, such as coal mine accidents, no investigation shall be conducted.

(3) If KY-OSH Program jurisdiction has been preempted only partially, the investigation shall be conducted as usual; and all apparent violations shall be noted, including those for which jurisdiction has been preempted. A referral shall be made to the local office of the appropriate agency for such violations as soon as practicable.

b. Agency Cooperation. If other agencies will be involved and are on site, the CSHO and/or the investigative team shall work with the other agencies as closely as possible to:

(1) Obtain all available information concerning the fatality or catastrophe.

(2) Assist each other in inspection of the accident site.

2. Use of Expert Assistance. The decision as to the need for experts to assist in the conduct of the investigation shall be made as soon as possible after the Team/CSHO has arrived on site. That decision shall be made by the Supervisor in consultation with the Program Manager upon the recommendation of the Team Leader/CSHO.

a. National Office Contact. Reserved.

b. Choice of Experts. Reserved.

c. Other Federal Agency. Reserved.

d. Consultants. In general, a consultant or "outside expert" is a person from the private sector paid a fee for special expertise.

e. Legal Advice. The advice of an attorney may be

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necessary at a very early stage of the investigation. The supervisor shall contact the General Counsel through the Director if assistance is required.

3. Rescue Operations. The KY-OSH Program has no authority to direct rescue operations--this is the responsibility of the employer and/or of local political subdivisions or other State agencies. The KY-OSH Program does have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers.
 - a. Consultation. The KY-OSH Program shall be available for consultation on the safest or most effective way to conduct rescue operations. This information, based on technical knowledge of competent KY-OSH Program personnel at the scene, shall be given freely, if requested.
 - b. Rescue Operations. If the CSHO is aware that the employer intends to use some rescue procedure that may be in violation of a standard or the general duty clause and the CSHO believes other, less hazardous procedures are more desirable, the employer shall be advised of this belief. The employer shall be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.
 - c. Application of Standards. If rescue work is performed by the employer, the KY-OSH Program standards are applicable. The employer is required to take such steps as are necessary to eliminate, if at all possible, or to minimize recognized hazards likely to cause death or serious physical harm, considering the urgency in a particular rescue operation.
 - d. Emergency Situations. Emergencies created by fatalities or catastrophes generally necessitate immediate rescue work, firefighting, etc., and any loss of time may increase injuries and/or fatalities. Therefore, when nonstandard equipment; e.g., tractors, bulldozers, etc., without rollover protection, is available for use in an emergency situation, the KY-OSH Program shall permit its use without citing the

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employer rather than cause a delay waiting for equipment which meets KY-OSH Program standards. The use of such equipment by private employers shall be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work shall warrant the issuance of citations when appropriate.

4. Public Information Policy. Reserved.